

**DONALD K. ANDERSON**  
Claimant

**FORD MOTOR COMPANY**  
Respondent

**LIBERTY MUTUAL INSURANCE COMPANY**  
Insurance Carrier

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## ORDER

## ISSUES

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant has been working for respondent as a warehouse attendant since about April 1996. His duties require him to be on his feet standing or walking on concrete for most of the time he is working. Claimant began having difficulties with his right foot in December 1996. He sought treatment on his own from board certified podiatric surgeon Dr. Mitchell F. Dorris who prescribed orthotics for claimant to wear in his shoes. Claimant has continued working for respondent and his right foot pain has continued.

Respondent argues that claimant has not established an injury by accident or that work aggravated the pre-existing condition. But Dr. Dorris and Dr. David J. Clymer both

support claimant's contention that his condition is exacerbated by excessive standing and walking. Dr. Dorris, in his letter of August 4, 1998, relates claimant's symptoms to his work.

Mr. Anderson's complaints stem from two painful accessory bones that were pre-existing architectural components of his foot. As a pre-existing anatomical structure alone, these bones would not ordinarily be painful. . . . As is the nature of Mr. Anderson's job, prolonged standing despite the use of a custom-rigid orthotic, has clearly aggravated these sites. It is rare that a patient would present with pain at either of the sites that Mr. Anderson is experiencing symptoms without the aggravating factors of prolonged standing, walking, and weight-bearing activity.

In support of its position, respondent offered the February 17, 1999 report of orthopaedic surgeon Dr. Clymer. His opinion is that while claimant's job activities may contribute to his symptoms, those activities have not caused a permanent aggravation of the pre-existing condition. Nevertheless, he believes claimant should consider surgery to correct the problem.

I feel Mr. Anderson's right foot symptoms are, indeed, on the basis of an accessory navicular which is clearly a pre-existing non-work-related problem. While it is true that symptoms with such a condition may change with activity level I do not feel that his work activities have in any significant or permanent way aggravated this process. Instead, he simply has a pre-existing non-work-related abnormality which may cause his foot to be somewhat uncomfortable with prolonged standing or walking. Given this, I think it is quite reasonable that he might consider surgical resection of that bone, but I do not feel this should be considered a work-related issue.

It is well established under the workers compensation law in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). The risk of employing a worker with a preexisting condition and thereby making the worker susceptible to injury, falls on the employer. Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976).

Respondent argues that claimant should be denied preliminary hearing benefits because the work activities have caused only a temporary aggravation of a pre-existing condition. This argument must fail because at a preliminary hearing claimant is not seeking compensation for permanent disability. Claimant's request is for medical treatment only. K.S.A. 1998 Supp. 44-510(a) makes it ". . . the duty of the employer to provide . . . such medical . . . treatment . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury." That the injury be a permanent as opposed to a temporary aggravation is not a prerequisite to the duty to furnish medical treatment.

Although Dr. Clymer's opinion may be read as being to the contrary, the Appeals Board is persuaded by the testimony of claimant and the opinion of Dr. Dorris that claimant suffered aggravations of his right foot problem from standing and walking on concrete at his job. The aggravation of his foot condition is compensable and claimant is entitled to reasonable medical care to cure and relieve the effects of the injury.

Claimant's form E-1 filed August 14, 1998 alleges a series of accidents "beginning 12/23/96, continuing through most recent date of employment, 8/12/98." At the April 13, 1999 preliminary hearing this was orally amended to allege repetitive traumas commencing August 12, 1998 through April 12, 1999. Claimant testified he gave notice to his supervisor Dale Driggs in August 1998. The parties stipulated that written claim was received on August 17, 1998. The Appeals Board finds this notice and written claim to be timely based upon accident by an each and every working day aggravation.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated April 14, 1999 should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1999.

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BOARD MEMBER

c: Shon Qualseth, Lawrence, KS  
James K. Blickhan, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director